

Corruption of public officials: is defined as the act by which a person entrusted with a specific public or private function solicits / proposes or agrees / assigns, a gift, an offer or a promise, with a view to performing, delaying or omitting to perform an act that comes, directly or indirectly, within the scope of his duties. **The offence of corruption is provided for in Articles 433-1 and 433-2 of the Criminal Code.**

The offer of sums of money to an official, even if he has not accepted it, constitutes the very offence of **active bribery** unlike **passive bribery** which consists of an abstention or a positive act by the authorized agent.

Any person who, by his or her actions, incites corruption or knowingly prepares, facilitates or assists in its enforcement may be found guilty of complicity in corruption in accordance with the provisions of article 121-7 of the Criminal Code:

“A person is an accomplice to a crime or misdemeanor if he or she knowingly facilitates its preparation or consumption by means of aid or assistance.

An accomplice is also the person who by gift, promise, threat, order, abuse of authority or power will have provoked an offence or given instructions to commit it.”

Private corruption:

For there to be the so-called private corruption:

- there must be an absence of the status of public official;
- the "corrupt" person must practice in the context of a professional or social activity
- the advantage should benefit a person (physical or moral, associative ..) belonging to the private sphere.

Influence peddling: is defined as “the act, by a person entrusted with a public authority, a public service mission, or a public elective mandate, of soliciting or approving, without right, at any time, directly or indirectly, offers, promises, donations, gifts or benefits of any kind for himself or for others.

- to perform or refrain from performing an act of his function, mission or mandate or facilitated by his function, mission or mandate;

- to abuse his or her real or supposed influence in order to obtain from an authority or public administration distinctions, jobs, contracts or any other favourable decision.”

The offence of influence peddling is provided for in Article 432-11 of the Penal Code.

The unlawful taking of interest: is defined as the act, by a person in charge of the public authority or charged with a public service mission or by a person holding a public elected office, to take, to receive or retain, directly or indirectly, any interest in any enterprise or transaction of which he/she has, at the time of the act, in whole or in part, the responsibility for the supervision, administration, liquidation or payment. **The offence of unlawful taking of interest is provided for by article 432-12 and article 432-13 of the penal code.**

Favouritism: is defined as the act of a person depository of the public authority or entrusted with a public service mission or invested with a public elective mandate or exercising the

functions of representative, administrator or agent of the State, local authorities or public institutions, semi-public companies of national interest entrusted with a public service mission and local semi-public companies or by any person acting on behalf of one of the above-mentioned companies to procure or attempt to procure an unjustified advantage for others by an act contrary to laws or regulations intended to guarantee freedom of access and equality of candidates in public contracts and public service delegations. **The offence of favouritism is envisaged by article 432-14 of the penal code.**

PEP: The Politically Exposed Persons are natural persons who hold or have held important public office, not necessarily in the political sphere and who may be associated with significant decision-making power or persons who are closely related to such persons. The functions of PEPs are listed in Article R.561-18-I of the Monetary and Financial Code (MFC).

The 4th directive has broadened the concept of Politically Exposed Persons (PEPs) and now includes senior managers of international organizations as well as persons who exercise or have held important public positions in the national territory (“national PEPs”) or foreign.

PEPs are a high-risk public because of their influence and ability to act as a proxy for money laundering, terrorist financing or to help those who wish to do so. **An Increased duty of care is imposed on companies working with such persons or on companies with shareholders, natural or legal persons having this status.**

In the context of Due diligence, or reasoned diligence, Dickson Constant, must ensure that this obligation is respected. Before entering into a business relationship, the completion of a transaction, professionals must identify the client, or even the beneficial owner of the transaction. In particular, they must verify their identity on the basis of any convincing written document (Article L. 561-5 of the MFC) and gather all information on the purpose and nature of the proposed transaction (Article L. 561-6 of the MFC).

Conflict of Interest: A conflict of interest is defined as “any interference between a public interest and public or private interests that is likely to influence or appear to influence the independent, impartial and objective exercise of a function” (Act of 11 October 2013 on the transparency of public life). In other words, the conflict of interest is the fact that for any person exercising a professional activity or depository of the public authority, charged with a public service mission, of an elective mandate, to have placed himself in a situation that could arouse a doubt about the motives of his decisions.

Thus, any investment with a competitor, a supplier or a customer or a professional activity must be the subject of a prior declaration to his superiors. Indeed, this type of situation can alter the objectivity that is incumbent on all employees when they commit the company.

In other circumstances, the conflict of interest may be characterized by the fact that the employee maintains a relationship with a third person or company. In this case the employee must inform his / her hierarchy of the existence of this link, before any decision is taken and refrain from any interference in the decision-making process.

Example: My wife runs an industrial cleaning company recognized for the quality of services. As a purchasing manager, can I propose to him this service, since his company represent the most interesting offer? You can submit this offer for consideration. However, you must still inform your superiors of your relationship with the company manager so that the decision is

made in an objective and informed manner and you refrain from participating in the decision-making process.

Sexual Harassment: Sexual harassment is characterized by the fact of imposing on a person, *repeatedly*, sexual comments or behaviours that:

- undermine his dignity because of their degrading or humiliating character,
- or create an intimidating, hostile or offensive situation against him.

Sexual harassment includes any form of serious pressure (even if not repeated) for the real or apparent purpose of obtaining a sexual act, for the benefit of the perpetrator or a third party.

In the workplace, sexual harassment occurs even if there is no hierarchical relationship between you and the perpetrator (between colleagues at the same level, from different departments, etc.)

See the Internal Regulation Article 16, which itself refers to Article L1153-1 and following of the Labour Code

Moral harassment Moral harassment manifests itself in repeated malevolent acts: derogatory remarks, intimidation, insults ...

These actions lead to a serious deterioration of the victim's working conditions, and can:

- undermine his rights and dignity,
- impair his physical or mental health,
- or jeopardize one's professional future.

If you are a victim of moral harassment, you can benefit from the protection of the law, regardless whether you are an employee, a trainee or an apprentice.

These actions are prohibited even if there is no hierarchical link between you and the perpetrator

See the Internal Regulation Article 17, which itself refers to Article L1152-1 and following of the Labour Code

Abuse of Social Assets (ASA): It is the fact for the managers (article L 241-3, 4° of the commercial law) the president, the administrators or the general managers (article L 242-6, 3°) to apply insincerely, the goods or the credit of the company, a use which they know contrary with the interest of the corporation, for personal purposes or to favour another corporation or business in which they are directly or indirectly interested: It is, altogether, an offence of illegitimate appropriation, close to **the breach of trust which, can relate to all types of collaborators.**

Difference with theft and scam

The breach of trust is different to a scam. When there is a breach of trust, there is no fraud. The author of the facts has a **real right** on the property concerned. There is fraud if the perpetrator **makes believe** that he has a right to the property (for example, if the perpetrator withdraws money from the victim's account with a false power of attorney).

The breach of trust is also different from theft. In the case of a breach of trust, the victim **voluntarily handed** the property to the perpetrator or **allowed** to the perpetrator to dispose of that property. There is theft if the property was taken by the perpetrator **without any consent** and **without voluntary surrender** by the victim.

The accomplice is punishable according to the rules of common law, i.e. he must have been aware of the elements of the criminal offence charged against the main perpetrator and have committed positive acts. On the other hand, it does not matter that the accomplice does not have, de facto, the status of jure director, required only at the level of the principal perpetrator.

Endangering the life of others: it is defined in article 223-1 of the penal code as being “the fact of directly exposing others to an immediate risk of death or injury likely to result in mutilation or permanent disability by the manifestly deliberate violation" a special obligation of safety or prudence imposed by law or regulation is punishable by one year imprisonment and a 15000 euro fine.”

The employer having the responsibility of security in his charge can be criminally prosecuted for endangering the life of others.

Discrimination: Discrimination is defined as the unequal and unfair treatment applied to certain persons, in particular because of their origin, their name, their sex, their physical appearance or their membership to a philosophical, trade union or political movement.

Making a distinction between employees (or between candidates for recruitment or access to an internship or training period in a company) on grounds other than the requirements of the job or the professional qualities of the employee constitutes discrimination prohibited by law.

Discrimination based on one of the grounds referred to in Article L. 1132-1 of the Labour Code:

- origin,
- sex,
- morals,
- sexual orientation,
- gender Identities,
- age,
- family situation or pregnancy,
- genetic features,
- the membership or non-membership, true or supposed, to an ethnic group, a nation, an alleged race or a specific religion,
- political views,
- trade union or mutual activities,
- religious beliefs,
- physical appearance,
- the surname,
- location of household,
- health status or disability,
- the particular vulnerability resulting from the economic situation of the person concerned, apparent or known to the author of the decision,

- loss of autonomy,
- the ability to express oneself in a language other than French,
- bank address (this criterion has been added to the list of discrimination criteria prohibited by the law of the 28 February 2017, in force since 2 March 2017).

Theft

Theft is defined in article 311-1 of the penal code. It is “the fraudulent subtraction of the thing from others”.

Sources: www.legifrance.gouv.fr, www.service-public.fr; www.justice.gouv.fr; www.cercle-ethique.net; www.travail-emploi.gouv.fr